

SUPPLEMENT NO. 5 TO PART 744—PROCEDURES FOR END-USER REVIEW COMMITTEE ENTITY LIST DECISIONS

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, will make all decisions to make additions to, removals from or changes to the Entity List. The ERC will be chaired by the Department of Commerce and will make all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

When determining to add an entity to the Entity List or to modify an existing entry, the ERC will also specify the section or sections of the EAR that provide the basis for that determination. In addition, if the section or sections that form the basis for an addition or modification do not specify the license requirements, the license application review policy or the availability of license exceptions, the ERC will specify the license requirements, the license application review policy and which license exceptions (if any) will be available for shipments to that entity.

Any agency that participates in the ERC may make a proposal for an addition to, modification of or removal of an entry from the Entity List by submitting that proposal to the chairman.

The ERC will vote on each proposal no later than 30 days after the chairman first circulates it to all member agencies unless the ERC unanimously agrees to postpone the vote. If a member agency is not satisfied with the outcome of the vote of the ERC that agency may escalate the matter to the Advisory Committee on Export Policy (ACEP). A member agency that is not satisfied with the decision of the ACEP may escalate the matter to the Export Administration Review Board (EARB). An agency that is not satisfied with the decision of the EARB may escalate the matter to the President.

The composition of the ACEP and EARB as well as the procedures and time frames shall be the same as those specified in Executive Order 12981 as amended by Executive Orders 13020, 13026 and 13117 for license applications. If at any stage, a decision by majority vote is not obtained by the prescribed deadline the matter shall be raised to the next level.

A final decision by the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) to make an addition to, modification of, or removal of an entry from the Entity List shall operate as clearance by all member agencies to publish the addition, modification or removal as an amendment to the Entity List even if, in the case of a decision by the ERC to add an entry or any decision by the ACEP or EARB, such decision is not unanimous. Such amend-

ments will not be further reviewed through the regular Export Administration Regulations interagency review process.

A proposal by the ERC to make any change to the EAR other than an addition to, modification of, or removal of an entry from the Entity List shall operate as a recommendation and shall not be treated as interagency clearance of an EAR amendment. The chairman of the ERC will be responsible for circulating to all member agencies proposals submitted to him by any member agency. The chairman will be responsible for serving as secretary to the ACEP and EARB for all review of ERC matters. The chairman will communicate all final decisions that require Entity List amendments or individual "is informed" letters, to the Bureau of Industry and Security which shall be responsible for drafting the necessary changes to the Entity List. If the ERC decides in a particular case that a party should be informed individually instead of by EAR amendment the chairman will be responsible for preparing the "is informed" letter for the signature of the Deputy Assistant Secretary for Export Administration.

A listed entity may present a request to remove or modify its Entity List entry along with supporting information to the chairman at Room 3886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. The chairman shall refer all such requests and supporting information to all member agencies. The member agencies will review and vote on all such requests. The time frames, procedures and right of escalation by a member agency that is dissatisfied with the results that apply to proposals made by a member agency shall apply to these requests. The decision of the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) shall be the final agency decision on the request and shall not be appealable under part 756 of the EAR. The chairman will prepare the response to the party who made the request. The response will state the decision on the request and the fact that the response is the final agency decision on the request. The response will be signed by the Deputy Assistant Secretary for Export Administration.

The End-User Review Committee will conduct a review of the entire Entity List at least once per year for the purpose of determining whether any listed entities should be removed or modified. The review will include analysis of whether the criteria for listing the entity are still applicable and research to determine whether the name(s) and address(es) of each entity are accurate and complete and whether any affiliates of each listed entity should be added or removed.

[73 FR 49322, Aug. 21, 2008]

PART 745—CHEMICAL WEAPONS CONVENTION REQUIREMENTS

Sec.

745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.

SUPPLEMENT NO. 1 TO PART 745—SCHEDULES OF CHEMICALS

SUPPLEMENT NO. 2 TO PART 745—STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING, AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION

SUPPLEMENT NO. 3 TO PART 745—FOREIGN GOVERNMENT AGENCIES RESPONSIBLE FOR ISSUING END-USE CERTIFICATES PURSUANT TO § 745.2

AUTHORITY: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

SOURCE: 64 FR 27143, May 18, 1999, unless otherwise noted.

§ 745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

Pursuant to the Convention, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW) not less than 30 days in advance of every export of a Schedule 1 chemical, in any quantity, to another State Party. In addition, the United States is required to provide a report of all exports of Schedule 1 chemicals to other States Parties during each calendar year. If you plan to export any quantity of a Schedule 1 chemical controlled under the EAR and licensed by the Department of Commerce or controlled under the International Traffic in Arms Regulations (ITAR) and licensed by the Department of State, you are required under this section to notify the Department of Commerce in advance of this export. You are also required to provide an annual report of exports that actually occurred during the previous calendar year. The United States will transmit the advance notifications and an aggregate annual report to the OPCW of exports of Schedule 1 chemicals from the United States. Note that the notification and annual report requirements of

this section do not relieve the exporter of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the EAR or from the Department of State for the export of Schedule 1 chemicals subject to the ITAR.

(a) *Advance notification of exports.* You must notify BIS at least 45 calendar days prior to exporting any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to another State Party. This is in addition to the requirement to obtain an export license under the EAR for chemicals controlled by ECCN 1C350 or 1C351 for any reason for control, or from the Department of State for Schedule 1 chemicals controlled under the ITAR. Note that such notifications may be sent to BIS prior to or after submission of a license application to BIS for Schedule 1 chemicals controlled subject to the EAR and under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled on the ITAR. Such notices must be submitted separately from license applications.

(1) Such notification should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

- (i) Common Chemical Name;
- (ii) Structural formula of the chemical;
- (iii) Chemical Abstract Service (CAS) Registry Number;
- (iv) Quantity involved in grams;
- (v) Planned date of export;
- (vi) Purpose (end-use) of export;
- (vii) Name of recipient;
- (viii) Complete street address of recipient;
- (ix) Export license or control number, if known; and
- (x) Company identification number, once assigned by BIS.

(2) Send the notification either by fax to (202) 482-1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and